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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,126	03/31/2004	Darshan B. Joshi	VRT0131US	9216
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CAMPBELL STEPHENSON LLP 11401 CENTURY OAKS TERRACE BLDG. H, SUITE 250 AUSTIN, TX 78758			EXAMINER KAWSAR, ABDULLAH AL	
			ART UNIT 2195	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/815,126	Applicant(s) JOSHI ET AL.	
	Examiner Abdullah-Al Kawsar	Art Unit 2195	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/18/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-26 are pending.

#### *Claim Objections*

2. Claims 17-20 are objected to because of the following informalities: claims 17-20 has improper dependencies. Claims 17 and 18-20 are module claims dependent on claims 11 and 12 which are means plus function claims, wherein claims 16 and 17 are the claims with module functionality. Therefore, claim 17 should be dependent on claim 16 and claims 18 -20 should be dependent on claim 17. Appropriate correction is required.
3. Claim 26 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 26 is a system claim dependent to a computer readable medium claim; it is unclear if it is a system claim or computer-readable medium claim.

#### *Claim Rejections - 35 USC § 101*

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 11-20 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In claim 11, the preamble claimed "system", is software per se, as

it is not tangibly embodied on any sort of physical medium. The claim recite "means determining", "means enabling", "means restarting", wherein these "means" limitations are described as being software in the specification.

6. As per claim 16, the claimed system is software per se, as they are not tangibly embodied on any sort of physical medium or hardware. The claims recite "determining module", "enabling module", "restarting module", but these limitations are described as being software in the specification.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following claim languages are unclear and indefinite:

i. Claim 1, line 2 recites "determining" it is unclear how the determining is performed (i.e. what is the basis of determining the quantity of resource? is there a predefined number already preset?). Line 5-9, it is not clearly understood whether the "enabling step" and "restarting" are being performed or only either one of these steps are performed since line 5 recited "at least one of" but line 7 indicated "and".

- ii. Claim 11, 16 and 21 has similar deficiencies as of claim 1 above.
- iii. Claim 2, line 3 recites "business priority" it is unclear what is meant by business priority.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1,2, 5-8, 11-12, 15-17, 20-22, 25-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Huang(Huang) US Patent No. 6212562, in view of Short et al.(Short) US Patent No. 6178529.

11. As per claim 1, Huang teaches the invention substantially as claimed including a method comprising:

determining whether a resource in a first cluster can be allocated to provide a quantity of the resource to an application ( abstract, lines 3-7); and

if the resource in the first cluster cannot be allocated to provide the quantity of the resource to the application, performing at least one of enabling the first cluster to provide the quantity of the resource to the application by reconfiguring the first cluster, ( abstract, lines 7-11), and

Huang does not specifically disclose restarting the application in a second cluster having a sufficient amount of the resource to provide the quantity of the resource to the application

However, Short teaches restarting the application in a second cluster having a sufficient amount of the resource to provide the quantity of the resource to the application (col 7, lines 38-43; col 8 lines 3-6)

It would have been obvious to a person of ordinary skill in art at the time of invention was made to incorporate the teaching of Short into the method of Huang to restarting the application in a second cluster having a sufficient amount of the resource to provide the quantity of the resource to the application. The modification would have been obvious because one of the ordinary skills of the art would want to be able to utilize the available resource in the system for processing application.

12. As per claim 2, Short teaches selecting the application to be allocated the quantity of the resource from a plurality of applications in accordance with a business priority for the application (col 7, lines 22-31).

13. As per claim 5, Short teaches monitoring performance of a plurality of applications running in the first cluster (col 2, lines 1-5); and

if performance of one application of the plurality of applications fails to satisfy a criterion, requesting to allocate a second quantity of the resource for the one application to

enable the performance of the one application to satisfy the criterion(col 1, lines 31-34).

14. As per claim 6, Short teaches the first cluster is remote from the second cluster (col 1, lines 62-65; col 2, lines 51-54).

15. As per claim 7, Short teaches the determining whether the resource in the first cluster can be allocated to provide the quantity of the resource to the application is performed in response to failure of the application ( col 7, lines 32-35).

16. As per claim 8, Short teaches the determining whether the resource in the first cluster can be allocated to provide the quantity of the resource to the application is performed in response to starting the application (col 8, lines 3-6; lines 26-31).

17. As per claims 11 and 21, they have similar limitations as claim 1 above. Therefore, they are rejected under the same rational as of claim 1 above.

18. As per claims 12, 17 and 22, they have similar limitations as claim 2 above. Therefore, they are rejected under the same rational as of claim 2 above.

19. As per claims 15, 20 and 25, they have similar limitations as claim 5 above. Therefore, they are rejected under the same rational as of claim 5 above.

20. As per claim 26, Short teaches a processor to execute instruction(col 2, lines 61-64);and the computer-readable medium(col 3, lines 5-18).

21. Claims 3, 9, 10, 13, 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang(Huang) US Patent No. 6212562, in view of Short et al.(Short) US Patent No. 6178529, as applied to claims 1, 11 and 21 above, and further in view of Trossman et al.(Trossman) US Patent No. 7308687.

22. As per claim 3, Huang and Short does not specifically disclose adding a second quantity of the resource to the first cluster.

However, Trossman teaches adding a second quantity of the resource to the first cluster ( col 11, 53-57).

It would have been obvious to a person of ordinary skill in art at the time of invention was made to incorporate the teaching of Fong into the combined method of Short and Huang to adding a second quantity of the resource to the first cluster. The modification would have been obvious because one of the ordinary skills of the art would want to be able to add or remove resources to the cluster according to the application necessity to be able to have a stable system execution.

23. As per claim 9, Trossman teaches the determining whether the resource in the first cluster can be allocated to provide the quantity of the resource to the application is performed in response to identifying a problem with performance of the application (col 8, lines 12-23).

24. As per claim 10, Trossman teaches the determining whether the resource in the first cluster can be allocated to provide the quantity of the resource to the application is performed in response to determining that the application is not in conformance with a policy (col 3, lines 35-45, lines 61-67).

25. As per claims 13, 18 and 23, they have similar limitations as claim 3 above. Therefore, they are rejected under the same rational as of claim 3 above.

26. Claims 4, 14, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang(Huang) US Patent No. 6212562, in view of Short et al.(Short) US Patent No. 6178529, as applied to claims 1, 11 and 21 above, and further in view of Fong et al.(Fong) US Patent No. 6366945.

27. As per claim 4, Huang and Short does not specifically disclose partitioning the resource within the first cluster.

However, Fong teaches partitioning the resource within the first cluster (col 1, lines 6-12; lines 38-45).

It would have been obvious to a person of ordinary skill in art at the time of invention was made to incorporate the teaching of Fong into the combined method of Short and Huang to partitioning the resource within the first cluster. The modification would have been obvious because one of the ordinary skills of the art would want to be able to modify the available

resources to illuminate the problematic resources and isolate them from rest of the application for repair and have the system running without interruption.

28. As per claims 14, 19 and 24, they have similar limitations as claim 4 above. Therefore, they are rejected under the same rational as of claim 4 above.

### *Conclusion*

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdullah-Al Kawsar whose telephone number is 571-270-3169. The examiner can normally be reached on 7:30am to 5:00pm, EST.


30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng Ai T. An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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